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SENATE BILL 734

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Linda M Lopez

AN ACT

RELATING TO SEX OFFENSES; PROVIDING THAT LACK OF CONSENT IS NOT AN ELEMENT OF FORCE OR COERCION FOR PURPOSES OF CERTAIN SEX OFFENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-9-10 NMSA 1978 (being Laws 1975, Chapter 109, Section 1, as amended) is amended to read:

"30-9-10. DEFINITIONS. -- As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

A. "force or coercion" means:

(1) the use of physical force or physical violence;

(2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute

underscored material = new
[bracketed material] = delete

1 the threats;

2 (3) the use of threats, including threats of
3 physical punishment, kidnapping, extortion or retaliation
4 directed against the victim or another when the victim
5 believes that there is an ability to execute the threats;

6 (4) the perpetration of criminal sexual
7 penetration or criminal sexual contact when the perpetrator
8 knows or has reason to know that the victim is unconscious,
9 asleep or otherwise physically helpless or suffers from a
10 mental condition that renders the victim incapable of
11 understanding the nature or consequences of the act; or

12 (5) the perpetration of criminal sexual
13 penetration or criminal sexual contact by a psychotherapist on
14 [his] the psychotherapist's patient, with or without the
15 patient's consent, during the course of psychotherapy or
16 within a period of one year following the termination of
17 psychotherapy.

18 Lack of consent by the victim or physical or verbal
19 resistance of the victim is not an element of force or
20 coercion;

21 B. "great mental anguish" means psychological or
22 emotional damage that requires psychiatric or psychological
23 treatment or care, either on an inpatient or outpatient basis,
24 and is characterized by extreme behavioral change or severe
25 physical symptoms;

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underscored material = new
[bracketed material] = delete

1 C. "patient" means a person who seeks or obtains
2 psychotherapy;

3 D. "personal injury" means bodily injury to a
4 lesser degree than great bodily harm and includes, but is not
5 limited to, disfigurement, mental anguish, chronic or
6 recurrent pain, pregnancy or disease or injury to a sexual or
7 reproductive organ;

8 E. "position of authority" means that position
9 occupied by a parent, relative, household member, teacher,
10 employer or other person who, by reason of that position, is
11 able to exercise undue influence over a child;

12 F. "psychotherapist" means a person who is or
13 purports to be a:

- 14 (1) licensed physician who practices
15 psychotherapy;
- 16 (2) licensed psychologist;
- 17 (3) licensed social worker;
- 18 (4) licensed nurse;
- 19 (5) counselor;
- 20 (6) substance abuse counselor;
- 21 (7) psychiatric technician;
- 22 (8) mental health worker;
- 23 (9) marriage and family therapist;
- 24 (10) hypnotherapist; or
- 25 (11) minister, priest, rabbi or other similar

